

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CRIMINAL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, September 17, 2021.]

People v. Aguayo, S254554. (D073304; 31 Cal.App.5th 758; San Diego County Superior Court; SCS295489.) Petition for review after the Court of Appeal conditionally reversed a judgment of conviction of criminal offenses and remanded for further proceedings. This case presents the following issues: (1) Is assault by means of force likely to produce great bodily injury a lesser included offense of assault with a deadly weapon? (See *People v. Aledamat* (2019) 7 Cal.5th 1, 16, fn. 5.) (2) If so, was defendant's conviction of assault by means of force likely to produce great bodily injury based on the same act or course of conduct as her conviction of assault with a deadly weapon? (3) Are Penal Code section 245, subdivision (a)(1) and section 245, subdivision (a)(4) merely different statements of the same offense for purposes of section 954? (4) If so, must one of defendant's convictions be vacated?

People v. Arnold, S269172. (B305073; nonpublished opinion; Los Angeles County Superior Court; GA077104.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Did the trial court err when it declined to accept the recommendation by the California Department of Corrections and Rehabilitation that defendant's sentence be recalled (Pen. Code, § 1170, subd. (d)) in order to address the statutory amendments made by Senate Bill No. 1393 in light of the court's conclusion that those amendments did not apply to final judgments?

People v. Braden, S268925. (E073204; 63 Cal.App.5th 330; San Bernardino County Superior Court; FVI18001116.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: What is the latest point at which a defendant may request mental health diversion under Penal Code section 1001.36?

People v. Brown, S257631. (C085998; nonpublished opinion; Shasta County Superior Court; 15F2440.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Did the trial court err in instructing the jury on the elements of first degree murder by poison (see *People v. Steger* (1976) 16 Cal.3d 539, 544–546; *People v. Mattison* (1971) 4 Cal.3d 177, 183–184, 186)? (2) Was any such instructional error prejudicial?

People v. Carney, S260063. (C077558; nonpublished opinion; Sacramento County Superior Court; 11F00700.) Petition for review after the Court of Appeal remanded for resentencing in part and otherwise affirmed judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Does the “substantial concurrent causation” theory of liability of *People v. Sanchez* (2001) 26 Cal.4th 834 permit a conviction for first degree murder if the defendants did not fire the shot that killed the victim? (2) What impact, if any, do *People v. Chiu* (2014) 59 Cal.4th 155 and Senate Bill No. 1437 (Stats. 2018, ch. 1015, § 1, subd. (f)) have on the rule of *Sanchez*?

In re D.N., S268437. (F080624; nonpublished opinion; Fresno County Superior Court; 19CEJ600384-1.) Petition for review after the Court of Appeal reversed in part and affirmed in part orders in a juvenile wardship proceeding. This case presents the following issue: Did the trial court improperly delegate its authority to the probation department and violate the minor’s due process rights by permitting the probation department to offer the minor community service hours “to work off any alleged probation violations”?

People v. Delgadillo, S266305. (B304441; nonpublished opinion; Los Angeles County Superior Court; BA436900.) Petition for review after the Court of Appeal dismissed an appeal from an order denying a post-judgment motion in a criminal matter. The court limited review to the following issues: (1) What procedures must appointed counsel and the Courts of Appeal follow when counsel determines that an appeal from an order denying postconviction relief lacks arguable merit? (2) Are defendants entitled to notice of these procedures?

People v. Duke, S265309. (B300430; 55 Cal.App.5th 113; Los Angeles County Superior Court; MA057733.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. The court limited review to the following issue: Can the People meet their burden of establishing a petitioner’s ineligibility for resentencing under Penal Code section 1170.95, subdivision (d)(3) by presenting substantial evidence of the petitioner’s liability for murder under Penal Code sections 188 and 189 as amended by Senate Bill No. 1437 (Stats. 2018, ch. 1015), or must the People prove every element of liability for murder under the amended statutes beyond a reasonable doubt?

People v. Espinoza, S269647. (F079209; nonpublished opinion; Tulare County Superior Court; VCF109133B-03.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Did the Court of Appeal err in ruling that defendant failed to demonstrate prejudice within the meaning of Penal Code section 1473.7 from trial counsel’s failure to properly advise him of the immigration consequences of his plea?

People v. Federico, S263082. (E072620; 50 Cal.App.5th 318; Riverside County Superior Court ; SWF017423.) Petition for review after the Court of Appeal affirmed a

judgment of conviction of criminal offenses. This case presents the following issue: Did defendant's resentencing pursuant to Penal Code section 1170, subdivision (d)(1) "reopen" the finality of his sentence, such that he was entitled to the retroactive application of Proposition 57 and Senate Bill No. 1391 on an otherwise long-final conviction? (See also *People v. Padilla*, S263375.)

In re Ferrell, S265798. Original proceeding. The court issued an order to show cause why relief should not be granted on the ground that the jury's true finding on the Penal Code section 12022.53, subdivision (d) enhancement did not render the *People v. Chun* (2009) 45 Cal.4th 1172 error harmless beyond a reasonable doubt.

People v. Gray, S269237. (B302236; 63 Cal.App.5th 947; Los Angeles County Superior Court; MA065662.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Did the trial court violate the due process right to confrontation applicable at probation and parole revocation hearings by admitting hearsay statements in a bodycam video under the excited utterance exception (Evid. Code, § 1240) without first making a finding of good cause and determining whether a balancing of the relevant factors under *People v. Arreola* (1994) 7 Cal.4th 1144 favored admission?

People v. Henderson, S265172. (B298366; 54 Cal.App.5th 612; Los Angeles County Superior Court; BA437882.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does the Three Strikes law (Pen. Code, §§ 667, subd. (c)(6) & (7), 1170.12, subd. (a)(6) & (7)) require consecutive terms on multiple current violent or serious felony convictions, regardless of whether the offenses occurred on the same occasion or arose from the same set of operative facts?

People v. Hendrix, S265668. (B298952; 55 Cal.App.5th 1092; Venture County Superior Court; 2018037331.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issues: Did the Court of Appeal err in holding an instructional error on the defense of mistake of fact harmless? In the circumstances of this case, which standard of prejudice applies to an error in instructing on the defense of mistake of fact: that of *People v. Watson* (1956) 46 Cal.2d 818 or that of *Chapman v. California* (1967) 386 U.S. 18?

People v. Henson, S252702. (F075101; 28 Cal.App.5th 490; Fresno County Superior Court; F16903119.) Petition for review after the Court of Appeal reversed and remanded a judgment of conviction of criminal offenses. This case presents the following issue: When a defendant is held to answer following separate preliminary hearings on charges brought in separate complaints, can the People file a unitary information covering the charges in both those cases or must they obtain the trial court's permission to consolidate the pleadings? (See Pen. Code, §§ 949, 954.)

People v. Hernandez, S265739. (F080131; 55 Cal.App.5th 942; Kern County Superior Court; BF177632A.) Petition for review after the Court of Appeal reversed and remanded for resentencing. This case presents the following issues: (1) If a defendant's prior prison term enhancements are stricken under Senate Bill No. 136, does the remainder of the sentence agreed to under a plea agreement remain intact or must the case be remanded to allow the People to withdraw from the plea agreement and to obtain the trial court's approval (see *People v. Stamps* (2020) 9 Cal.5th 685)? (2) If the plea agreement is rescinded in light of Senate Bill No. 136, can the defendant be sentenced to a term longer than provided for in the original agreement?

In re Jenkins, S267391. (B301638; nonpublished opinion; Los Angeles County Superior Court; BA467828.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. The court limited review to the following issue: When a habeas petitioner claims not to have received a fair trial because the district attorney failed to disclose material evidence in violation of *Brady v. Maryland* (1963) 373 U.S. 83 — and when the Attorney General has knowledge of, or is in actual or constructive possession of, such evidence — what duty, if any, does the Attorney General have to acknowledge or disclose that evidence to the petitioner? Would any such duty be triggered only upon issuance of an order to show cause?

People v. Kopp, S257844. (D072464; 38 Cal.App.5th 47; San Diego County Superior Court; SCN327213.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Must a court consider a defendant's ability to pay before imposing or executing fines, fees, and assessments? (2) If so, which party bears the burden of proof regarding the defendant's inability to pay?

In re Lopez, S258912. (A152748; nonpublished opinion; Sonoma County Superior Court; SCR32760.) Petition for review after the Court of Appeal reversed an order granting relief on a petition for writ of habeas corpus. This case presents the following issues: (1) Does a true finding on a gang-killing special circumstance (Pen. Code, § 190.2, subd. (a)(22)) render *Chiu* error (*People v. Chiu* (2014) 59 Cal.4th 155) harmless? (2) To what extent or in what manner, if any, may a reviewing court consider the evidence in favor of a legally valid theory in assessing whether it is clear beyond a reasonable doubt that the jury based its verdict on the valid theory, when the record contains indications that the jury considered the invalid theory? (See *People v. Aledamat* (2019) 8 Cal.5th 1.)

People v. Lopez, S258175. (B271516; 38 Cal.App.5th 1087; Los Angeles County Superior Court; BA404685.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. FAVOR* (2012) 54 Cal.4th 868 be reconsidered in light of *Alleyne v. United States* (2013) 570 U.S. 99 and *People v. Chiu* (2014) 59 Cal.4th 155?

People v. Lopez, S261747. (F076295; 46 Cal.App.5th 505; Tulare County Superior Court; VCF325028TT.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited review to the following issue: Did the trial court err by sentencing defendant to 15 years to life under the alternate penalty provision of the criminal street gang penalty statute (Pen. Code, § 186.22, subd. (b)(4)(B)) for his conviction of conspiracy to commit home invasion robbery, even though conspiracy is not an offense listed in the penalty provision?

People v. Martinez, S267138. (H046164; 59 Cal.App.5th 280; Santa Clara County Superior Court; C1518585.) Review ordered on the court's own motion after the Court of Appeal reversed a judgment of conviction of a criminal offense. The court limited review to the following issue: Did the Court of Appeal correctly declare California Code of Regulations, title 10, section 2076, unconstitutional on its face?

People v. McWilliams, S268320. (H045525; nonpublished opinion; Santa Clara County Superior Court; C1754407.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issues: Is the discovery of a parole or probation search condition an intervening circumstance that removes the taint of an illegal detention under the attenuation doctrine? What constitutes purposeful and flagrant police misconduct under the attenuation doctrine analysis?

In re Milton, S259954. (B297354; 42 Cal.App.5th 977; Los Angeles County Superior Court; TA039953.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issue: Do the limitations of *People v. Gallardo* (2017) 4 Cal.5th 120 on judicial fact-finding concerning the basis for a prior conviction apply retroactively to final judgments? (Compare *In re Milton* (2019) 42 Cal.App.5th 977 with *In re Brown* (2020) 45 Cal.App.5th 699.)

In re Mohammad, S259999. (B295152; 42 Cal.App.5th 719; Los Angeles County Superior Court; BA361122, BH011959.) Petition for review after the Court of Appeal granted relief on a petition for writ of habeas corpus. This case presents the following issue: Is a prisoner serving a sentence for a combination of violent and nonviolent felonies eligible for early parole consideration under the provisions of Proposition 57 following completion of the term for his or her primary offense?

Molina v. Superior Court, S256394. (G056530; 35 Cal.App.5th 531; Orange County Superior Court; 02CF0701.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did the Court of Appeal err in ruling that petitioner could not seek relief by petition for writ of mandate from a concededly invalid conviction (see *People v. Rodriguez* (2012) 55 Cal.4th 1125) under Penal Code section 186.22, subdivision (a)?

People v. Padilla, S263375. (B297213; 50 Cal.App.5th 244; Los Angeles County Superior Court; TA051184.) Petition for review after the Court of Appeal conditionally reversed and remanded a judgment of conviction of criminal offenses. This case presents the following issue: When a judgment becomes final, but is later vacated, altered, or amended and a new sentence imposed, is the case no longer final for the purpose of applying an intervening ameliorative change in the law? (See also *People v. Federico*, S263082.)

People v. Ramirez, S262010. (F076126; nonpublished opinion; Tuolumne County Superior Court; CRF50964.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Did the trial court err in ruling that defendant's overdose on heroin during his jury trial was an implicit waiver of his right to be present and made him voluntarily absent within the meaning of Penal Code section 1043, subdivision (b)(2)? (2) Did the trial court err in denying the defense motion for a one-day continuance to permit defendant to testify?

People v. Renteria, S266854. (F076973; nonpublished opinion; Tulare County Superior Court; VCF304654.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court limited review to the following issue: When a member of a criminal street gang acts alone in committing a felony, what evidence will suffice to establish the felony was "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members"? (Pen. Code, § 186.22, subd. (b)(1); see *People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

People v. Strong, S266606. (C091162; nonpublished opinion; Sacramento County Superior Court; 11F06729.) Petition for review after the Court of Appeal affirmed an order denying a post-judgment motion in a criminal matter. This case presents the following issue: Does a felony-murder special circumstance finding (Pen. Code, § 190.2, subd. (a)(17)) made before *People v. Banks* (2015) 61 Cal.4th 788 and *People v. Clark* (2016) 63 Cal.4th 522 preclude a defendant from making a prima facie showing of eligibility for relief under Penal Code section 1170.95?

People v. Superior Court (Jones), S255826. (D074028; 34 Cal.App.5th 75; San Diego County Superior Court; CR136371.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Does Penal Code section 1054.9 entitle an eligible defendant to discovery of a trial prosecutor's notes about jury selection with respect to a claim of *Batson/Wheeler* (*Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258) error at trial?

People v. Tacardon, S264219. (C087681; 53 Cal.App.5th 89; San Joaquin County Superior Court; STKCRFER20180003729.) Petition for review after the Court of Appeal reversed an order granting a motion to suppress evidence. This case presents the following issue: Was defendant unlawfully detained when the arresting officer used his spotlight to illuminate defendant's parked car and then directed a passenger who exited the car to remain outside and stay on the sidewalk near the car?

People v. Tirado, S257658. (F076836; 38 Cal.App.5th 637; Kern County Superior Court; BF163811A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Can the trial court impose an enhancement under Penal Code section 12022.53, subdivision (b), for personal use of a firearm, or under section 12022.53, subdivision (c), for personal and intentional discharge of a firearm, as part of its authority under section 1385 and subdivision (h) of section 12022.53 to strike an enhancement under subdivision (d) for personal and intentional discharge of a firearm resulting in death or great bodily injury, even if the lesser enhancements were not charged in the information or indictment and were not submitted to the jury?

In re Vaquera, S258376. (G056786; 39 Cal.App.5th 233; Orange County Superior Court; 12NF0653.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issues: (1) Did the Court of Appeal err by disagreeing with *People v. Jimenez* (2019) 35 Cal.App.5th 373 and endorsing as mandatory the sentencing practice prohibited in that case? (2) Is the Court of Appeal's decision incorrect under *People v. Mancebo* (2002) 27 Cal.4th 735? (3) Did the Court of Appeal err by failing to address petitioner's claims as to the issues of waiver and estoppel?

People v. Ware, S263923. (D072515; 52 Cal.App.5th 919; San Diego County Superior Court; SCD255884.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court limited review to the following issue: Does sufficient evidence support Hoskins's Count 1 conviction for conspiracy to commit murder?

People v. Williams, S262229. (D074098; 47 Cal.App.5th 475; San Diego County Superior Court; SCD268493.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration?